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Paper No. 6

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DEC 03 2004

DIRECTOR'S OFFICE
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In re Application of
Yasunori Kawamura
Application No. 09/247, 549
Filed: February 10, 1999
For: **MULTIPLE-FORMAT VIDEO
ENCODER**

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is in response to the Petition for Withdrawal of Abandonment filed November 9, 2004, pursuant to 37 C.F.R. § 1.181(a). No fee is required.

On May 8, 2001, a non-final Office action was mailed (paper No. 3) in the subject application. A response from Applicants was not received. On December 12, 2001, a Notice of Abandonment was mailed (paper No. 4).

Petitioner alleges that the non-final Office action of May 8, 2001 (paper No. 3) was not received. As evidence of non-receipt, the petition states that Applicant's attorneys relocated March 6, 2000 to a new address in Washington D.C. and that the United States Postal Service was instructed to forward all mail to the new address. In addition, the petition states that on or about May 22, 2001, an e-mail was sent which included a spreadsheet of applications that were to be associated with Customer number 04372. Petitioner further states that new address was of record under the Customer number as of January 31, 2001.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office Action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

- (a) a statement from the practitioner stating that the Office communication was not received by the practitioner;
- (b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and,
- (c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Decision on Petition

A review of the application file finds no irregularity in the mailing of the Office action since it was mailed to the address of record at that time. Applicant's representatives admittedly moved more than a year prior to the mailing of the non-final Office action and a specific notice to update the correspondence address was not filed in this application. Petitioner refers to a customer number, however, the subject application was not associated with a customer number at the time of mailing. Petitioner states that an e-mail was sent on or about May 22, 2001 with a listing of applications that were to be associated with the customer number. This was after the mailing of the non-final Office action.

The further evidence provided by Petitioner, is an e-mail from the Office which brings into question the association of a list of applications and queries whether or not the list of applications should have been associated with Customer Number 04372. The subject application is one of those applications in question. No further evidence was provided to suggest that a response was sent or that the application should have been associated with the Customer Number 04372. There is no evidence of record which suggests that the subject application was ever associated with Customer Number 04372.

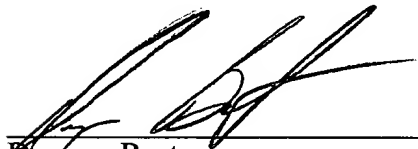
Therefore, petitioner has not made a sufficient showing of non-receipt of the non-final Office action (paper No. 3, mailed May 8, 2001) at the correspondence address of record at that time in accordance with the requirements set forth in MPEP §711.03(c), reproduced above. If the NIKAIDO MARMELESTEIN MURRAY & ORAM, METROPOLITAN SQUARE, 655 FIFTEENTH STREET N W, SUITE 330 - G STREET LOBBY, WASHINGTON DC 20005-5701 address was not the correct address of record, petitioner must submit evidence that the PTO was timely notified of the change in correspondence address such that there was an irregularity in the mailing of the Office action.

For the above reasons, the petition is **DENIED**.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision and include evidence of timely notification of a change or correction of the correspondence address of record for the above-identified application prior to the mailing of the non-final Office action on May 8, 2001. Alternatively, petitioner may want to consider filing a petition to revive an unintentionally abandoned application under 37 CFR 1.137(b).

A courtesy copy of this decision is being sent to Petitioner at the address given below. However, all future communications will continue to be sent to the address of record listed above until a proper change of correspondence address is filed.

The file is being returned to the Files Repository.



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